APPENDIX

ACTIONS ON APPLICATIONS
414 Mich 875 (1982)

Doe v Attorney General. (Docket No. 67308.) Leave to appeal denied August 10, 1982, Lippett, Harrison, Perlove, Friedman & Zack and Noel P. Keane, P.C., for plaintiffs-appellants. Frank J. Kelly, Attorney General, Louis J. Caruso, Solicitor General, Eugene Krasicky, First Assistant Attorney General, and George M. Elworth, Assistant Attorney General, for defendant-appellee Attorney General. William L. Cahalan, Prosecuting Attorney, Edward Reilly Wilson, Principal Attorney, Appeals, and Anne B. Wetherholt, Assistant Prosecuting Attorney, for defendant-appellee Wayne County Prosecutor. Reported below: 106 Mich App 169.

DOE v ATTORNEY GENERAL
106 Mich App 169 (1981)

Robert S. Harrison and Noel P. Keane, for plaintiffs.

Frank J. Kelley, Attorney General, Robert A. Derengoski, Solicitor General, and Eugene Krasicky and George M. Elworth, Assistants Attorney General, for the Attorney General.

William L. Cahalan, Prosecuting Attorney, Edward Reilly Wilson, Principal Attorney, Appeals, and Anne B. Wetherholt, Assistant Prosecuting Attorney, for the Wayne County Prosecutor.

Before: V.J. Brennan, P.J., and M.J. Kelly and D.C. Riley, JJ.

M.J. Kelly, J. In this case, we are asked to declare unconstitutional those sections of the Michigan Adoption Code, MCL 710.54; MSA 27.3178(555.54) and MCL 710.69; MSA 27.3178(555.69), which prohibit the exchange of money or other consideration in connection with adoption and related proceedings. 1/ The

plaintiffs appeal of right from a January 29, 1980, order of the lower court, denying their motion for summary judgment under GCR 1963, 117.2(3) and granting the defendants' own motion under the same rule. The parties are in agreement as to the pertinent facts in this decision.

Jane Doe and John Doe are pseudonyms for a married couple residing in Wayne County. In response to interrogatories posed by the Attorney General concerning the Does' marriage and whether any children were born of the marriage, the Does filed virtually identical affidavits stating the following information:

"2. That he [she] was married in the City of Farmington, Michigan, on August 20, 1965.

"3. That he [she] is the father [mother] of two sons, ages eleven and seven years."

From the nonresponsive answer to question 3, we are unable to say whether the two children were born of the Does' marriage or are adopted.

It is alleged that Jane Doe has undergone a tubal ligation, rendering her biologically incapable of bearing children and that the Does "wish to have a child biologically related to JOHN DOE". Mary Roe is employed as a secretary by John Doe and also resides in Wayne County. The complaint alleges that these parties contemplate and intend to enter into the following agreement:

> "(a) That JANE DOE and JOHN DOE will pay MARY ROE a sum of money in consideration for her promise to bear and deliver JOHN DOE's child by means of artificial insemination.
>
> "(b) That a licensed physician will conduct the artificial insemination process.
>
> "(c) That prior to the delivery of said child, JOHN DOE will file a notice of intent to claim paternity.

"(d) That at the time the child is born, JOHN DOE will formally acknowledge the paternity of said child.

"(e) That MARY ROE will acknowledge that JOHN DOE is the father of said child.

"(f) That MARY ROE will consent to the adoption of said child by JOHN DOE and JANE DOE".

The agreement also provided that plaintiffs would pay to Mary Roe the sum of $5,000 plus medical expenses. In addition, Mary Roe would be covered by sick leave, pregnancy disability insurance, and medical insurance from her employment while she is off work having the child and recuperating from the delivery.

The Plaintiffs allege that the disputed statutory provisions impermissibly infringe upon their constitutional right to privacy. This right, first recognized in Griswold v Connecticut, 381 US 479; 85 S Ct 1678; 14

L Ed 2d 510 (1965), was more recently described in Carey v Population Services International, 431 US 678; 97 S Ct 2010; 52 L Ed 2d 675 (1977). In Carey, the Court specifically held that the decision "whether or not to bear or beget a child" was among those protected by the constitutional right of privacy. 2/ See also Harris v McRae, 448 US 297; 100 S Ct 2671; 65 L Ed 2d 784 (1980) ("The constitutional underpinning of Wade [Roe v Wade, 410 US 113; 93 S Ct 705; 35 L Ed 2d 147 (1973)] was a recognition that the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life".)

While the decision to bear or beget a child has thus been found to be a fundamental interest protected by the right of privacy, see Maher v Roe, 432 US 464; 97 S Ct 2376; 53 L Ed 2d 484 (1977), we do not view this right as a valid prohibition to state interference in the plaintiffs' contractual arrangement. The statute in question does not directly prohibit John Doe and Mary Roe from having a child as planned. It acts instead to preclude plaintiffs from paying consideration in conjunction with their use of the state's adoption procedures. In effect, the plaintiffs' contractual agreement discloses a desire to use the adoption code to change the legal status of the child -- i.e., its right to support, intestate succession, etc. We do not perceive this goal as

within the realm of fundamental interests protected by the right to privacy from reasonable governmental regulation.

The Plaintiffs also allege that the state has no compelling interest sufficient to justify the prohibitions embodied in the disputed statutes and, in addition, that the provisions are drawn too wide to reflect any legitimate state interests in this area. Our disposition of the foregoing issue, however, renders consideration of this issue unnecesary.

Affirmed.

FOOTNOTES

1/ The statutory provisions sought to be declared invalid provide:

"Sec. 54. (1) Except for charges and fees approved by the court, a person shall not offer, give, or receive any money or other consideration or thing of value in connection with any of the following:

"(a) The placing of a child for adoption.

"(b) The registration, recording, or communication of the existence of a child available for adoption or the existence of a person interested in adopting a child.

"(c) A release.

"(d) A consent.

"(e) A petition.

"(2) Before the entry of the final order of adoption, the petitioner shall file with the court a sworn statement describing money or other consideration or thing of value paid to or exchanged by any part in the adoption proceeding, including anyone consenting to the adoption or adopting the adoptee, any relative of a party or of the adoptee, any physician, attorney, social worker or member of the clergy, and any other person, corporation, association, or other organization. The court shall approve or disapprove fees and expenses. Acceptance or retention of amounts in excess of those approved by the court constitutes a violation of this section.

"(3) To assure compliance with limitations imposed by this section, by section 14 of Act No. 116 of the Public Acts of 1973, being section 722.124 of the Michigan Compiled Laws, and by section 4 of Act No. 263 of the Public Acts of 1913, as amended, being section 331.404 of the Michigan Compiled Laws, the court may require sworn testimony from persons who were involved in any way in informing, notifying, exchanging information, identifying, locating, assisting, or in any other way participating in the contracts or arrangements which, directly or

indirectly, led to placement of the person for adoption."

"Sec. 69. A person who violates any of the provisions of sections 41 and 54 of this chapter shall, upon conviction, be guilty of a misdemeanor, and upon any subsequent conviction shall be guilty of a felony."

2/ The Carey Court summarized those previous decisions in which the right of privacy prohibited unwarranted governmental interference or regulation and which compelled the Court's conclusion as to the right to bear children:

"Although '[t]he Constitution does not explicitly mention any right of privacy,' the Court has recognized that one aspect of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment is 'a right of personal privacy, or a guarantee of certain areas or zones of privacy.' Roe v Wade, 410 US 113, 152 [93 S Ct 705; 35 L Ed 2d 147] (1973). This right of personal privacy includes 'the interest in independence in making certain kinds of important decisions.' Whalen v Roe, 429 US 589, 599-611 [97 S Ct 869; 51 L Ed 2d 64] (1977). While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions 'relating to marriage, Loving v Virginia, 388 US 1, 12 [87 S Ct 1817; 18 L Ed 2d 1010] (1967); procreation, Skinner v Oklahoma, 316 US 535, 541-542 [62 S Ct 1110; 86 L Ed 1655] (1942); contra-

ception, Eisenstadt v Baird, 405 US [438], at 453-454 [92 S Ct 1029' 31 L Ed 2d 349 (1972)]; id., at 460 463-465 (White, J., concurring in result); family relationships, Prince v Massachusetts, 321 US 158, 166 [64 S Ct 438; 88 L Ed 645] (1944); and child rearing and education, Pierce v Society of Sisters, 268 US 510, 535 [45 S Ct 571; 69 L Ed 1070; 39 ALR 468] (1925); Meyer v Nebraska, [262 US 390, 399; 43 S Ct 625; 67 L Ed 1042; 29 ALR 1446 (1923)].' Roe v Wade, supra, at 152-153. See also Cleveland Board of Education v LaFleur, 414 US 632, 639-640 [94 S Ct 791; 39 L Ed 2d 52] (1974)." 431 US 678, 684-685.

STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF WAYNE

JANE DOE, JOHN DOE,
and MARY ROE, JANE X.,
JANE Y., JOHN Y., JANE Z.,
AND JOHN Z., pseudonyms
for actual persons,

Plaintiffs,

-vs-

Hon. Roman S. Gribbs
C.A.# 78 815 531 CZ

FRANK J. KELLEY,
Attorney General for
the State of Michigan,
and WILLIAM L. CAHALAN,
Wayne County Prosecutor,

Defendants.

OPINION DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On May 15, 1978, plaintiffs filed a Complaint for Declaratory Judgment in the Wayne County Circuit Court. Motions for summary judgment are brought by

plaintiffs and defendants pursuant to GCR 1963, 117.2(3).

FACTS

The facts in this case are not in dispute. Plaintiffs, Jane and John Doe, are husband and wife. Jane Doe is biologically incapable of bearing children. The Does are joined in their complaint by Mary Roe.

The Does propose to have Mary Roe conceive a child with John Doe through artificial insemination administered by a physician. After birth, the Does would take custody of the child once he or she leaves the hospital; and Mary Roe would consent to the adoption of the child by the Does. Mary Roe would receive $5,000, plus medical expenses, from the Does for surrendering custody of her child to the Does and for consenting to the adoption.

In addition, Mary Roe will be covered by sick leave pregnancy disability insurance, and medical insurance from her employment while she is off work having the child and recuperating from the delivery.

The statutes whose constitutionality if involved in this matter are MCLA 710.54 and MCLA 710.69. The former provides, as follows:

> "Sec. 54. (1) Except for charges and fees approved by the court, a person shall not offer, give, or receive any money or other consideration or thing of value in connection with any of the following:
> "(a) The placing of a child for adoption.
> "(b) The registration recording or communication of the existence of a child available for adoption or the existence of a person interested in adopting a child.
> "(c) A release.

"(d) A consent.
"(e) A petition.
"2. Before the entry of the final order of adoption the petitioner shall file with the court a sworn statement describing money or other consideration or thing of value paid to or exchanged by any party in the adoption proceeding, including anyone consenting to the adoption or adopting the adoptee, any relative of a party or of the adoptee, any physician, attorney, social worker or member of the clergy, and any other person, corporation, association, or other organization. The court shall approve or disapprove fees and expenses. Acceptance or retention of amounts in excess of those approved by the court constitutes a violation of this section.
"(3). To assure compliance with limitations imposed by this section, by section 14 of Act No. 116 of the Public Acts of 1973, being section 722.124 of the Michigan Compiled Laws, and by section 4 of Act No. 263 of the Public, Acts of 1913, as amended, being section 331.404 of the Michigan Compiled Laws, the court may require sworn testimony from persons who were involved in any way in

> informing, notifying, exchanging information, identifying, locating, assisting, or in any other way participating in the contracts or arrangements which, directly or indirectly led to placement of the person for adoption."

MCLA 610.69 provides:

> "Sec. 69. A person who violates any of the provisions of sections 41 and 54 of this chapter shall, upon conviction, be guilty of a misdemeanor, and upon any subsequent conviction shall be guilty of a felony."

Plaintiffs' suit seeks to have these statutes declared unconstitutional by this Court and to enjoin defendants from prosecuting plaintiffs for proceeding with the plan outlined above.

DISCUSSION

Plaintiffs' constitutional challenge is basically two-pronged. Plaintiffs first urge that MCLA 710.54 is void for vagueness. Second, that the arrangement

proposed by plaintiffs is within the constitutional "right of privacy." Contained within that second contention are the propositions that the government does not have a compelling interest to invade that area of privacy and that the statute as drawn is not sufficiently narrow.

I.

This Court does not agree with plaintiffs' first contention that MCLA 710.54 is void for vagueness. Plaintiffs are correct in asserting that a statute is violative of due process if it proscribes conduct in terms so vague that a person of common intelligence must guess at the statute's meaning. Connally v General Construction Co., 269 US 385, 70 L Ed 322, 46 S Ct 126 (1926).

The dangers involved in the existence and enforcement of a vague statute are set forth by Mr. Justice Marshall in Grayned v City of Rockford, 408 US 104, 33 L Ed 2d 222, 92 S. Ct 2294 (1972) as follows:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc

> and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of basis first amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone. . . than if the boundaries of the forbidden areas were clearly marked."

In Grayned, Justice Marshall also enunciated a problem involved in all statutes, even those not void for vagueness. "Condemned to the use of words, we can never expect mathematical certainty from our language."

In a footnote to Grayned, the Court cited American Communications Assoc. vDoreds, 339 US 382, 94 L Ed 925, 70 S Ct 674 (1950), in which the Court stated:

> "There is little doubt that imagination can conjure up hypothetical cases in which

> the meaning of these terms will be in nice question. The applicable standard, however, is not one of wholly consistent academic definition of abstract terms. It is, rather, the practical criterion of fair notice to those to whom the statute is directed. The particular context is all important."

The statute in the instant case is as specific as is necessary to give fair notice to those to whom the statute is directed.

Plaintiffs question the explicitness of the phrase "or other consideration or thing of value" used in the statute. Even standing alone, this phrase is sufficiently specific to give fair notice to persons of reasonable intelligence what things may not be given in connection with the acts or items listed in (a)-(e) of MCLA 710.54(1). The meaning of that phrase is even more

specifically defined when it follows the only specific item listed, money. The well-established principle of ejusdem generis is pertinent to plaintiffs' contention of statutory vagueness. As the Court stated in diLeo v Greenfield, 541 F 2d 949 (1976):

> "Where general terms in a statute follow an enumeration of terms with specific meaning, the enumeration of terms with specific meaning, the general terms can be expected to apply to matters similar to those specified." (Citations omitted)

It is not necessary that the statute list all conceivable items of value to be constitutionally specific.

II.

Plaintiffs' second basis for urging the constitutional infirmity of the statutes is that they invade plaintiffs' constitutional right of privacy and

further that the statutes do not comply with the requirements of compelling state interest and the narrow drafting required of statutes regulating an act within the right of privacy. Before addressing the latter two points, it must first be determined that plaintiffs' proposed agreement is within the constitutional right of privacy.

That there exists a fundamental right of privacy is well established. The origins of this right were set forth in Roe v. Wade, 410 US 113, 35 L Ed 2d 147, 93 S Ct 705 (1973), as follows:

> "The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 US 250, 251, 35 L Ed 734, 11 S Ct 1000 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or

> zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments, in the penumbras of the Bill of Rights; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment." (Citations omitted)

In stating that only "fundamental" rights are included within the right of privacy, Roe acknowledged that activities relating to marriage, procreation, contraception, family relationships and child rearing and education are included in the guarantee of personal privacy.

The right which plaintiffs assert is specific, narrow and is not of the same personal nature that the constitutional right of privacy protects. Plaintiffs only attack the sections of the Michigan Adoptive Code that prohibits the exchange

of money or other valuable consideration. Although plaintiffs seek to exclude governmental interference with reference to a portion of the adoption statutes, they do not want to exclude the government altogether. They wish to avail themselves of other portions of the Michigan Adotpion Code in order to effect a legal adoption. Plaintiffs intend to utilize other protective provisions of the adoption law; i.e., total control of the child's welfare as legal parents, preserving the rights of inheritance of the child, etc. The right to adopt a child based upon the payment of $5,000 is not a fundamental personal right and reasonable regulations controlling adoption proceedings that prohibit the exchange of money (other than charges and fees approved by the Court) are not constitutionally infirm.

It is this Court's opinion that a contract to use the statutory authority of the Probate Court to effect the adoption of a child wherein such contract provides for valuable compensation, is not deserving of, nor is it within the constitutional protection of the right of privacy as defined by the many cases of the United States Supreme Court.

III.

Although the foregoing makes further discussion unnecessary, this Court will assume, arguendo, that the constitutional right of privacy does apply to the plaintiffs and proceed to the ancillary issues.

First, even if the constitutional right of privacy is applicable, such right is not absolute. It must be considered against important state

interests in regulation. Roe v Wade, supra. In determining the constitutionality of regulations, the Roe Court set forth the following test:

> "Where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." (Citations omitted)

The State's interest expressed in the statutes at issue here is to prevent commercialism from affecting a mother's decision to execute a consent to the adoption of her child. Although the case is distinguishable on the facts from the present case, the statement of the general rule by the Supreme Court of Kansas in In re Shirk's Estate, 350 P 2d 1 (1960), is applicable here.

> "Consequently, this controversy resolves itself down to the question whether the contract with respect to the mother's rights violated public policy. It is fundamental that parents may not barter or sell their children nor may they demand pecuniary gain as the price of consent to adoptions. This is so inherent in the fabric of American law that citation of authority is unnecessary."

"Baby bartering" is against the public policy of this State and the State's interest in preventing such conduct is sufficiently compelling and meets the test set forth in Roe.

Mercenary considerations used to create a parent-child relationship and its impact upon the family unit strikes at the very foundation of human society and is patently and necessarily injurious to the community.

It is a fundamental principle that children should not and cannot be bought and sold. The sale of children is illegal in all states. The brief of the Attorney General cites this elementary rule in 67A Parent and Child, §16, p 201-202, as follows:

> "Parents have no property rights, in the ordinary sense of that term, in or to their minor children, and, accordingly, a parent's right of control or custody of a minor child is not a property right which may be bargained, sole or otherwise disposed of." (Footnotes omitted)

The leading and recognized authority on Contracts, Professor Samuel Williston, writes that bartering for a child is and has been against public policy. He states in 15 Williston on Contracts, #RD Edition, Section 1744A, p 88:

> "The sovereign has an interest in a minor child held superior even to that of the parent;

> hence, there is public policy against the custody of such a child becoming a subject of barter." (Footnote omitted)

The Attorney General cogently argues that contracts for "surrogate gestation" are against public policy. He quotes the Executive Director of the Program in Law, Science and Medicine in Yale Law School, who stated:

> "In any case, the sale of children is illegal in all states; therefore, any contract by which a host-mother is paid a fee in excess of expenses to gestate the unborn child is likely to be held unenforceable as against public policy. That being the case, the 'foster' or gestating mother would presumably be considered by most courts the natural mother of the child since she and not the donor-mother was willing to go through the inconvenience, discomfort, and dangers pregnancy and childbirth.
>
> "It is highly unlikely that a judge, faced with a conflict between two women, one of whom

> has delivered the child and the other of whom 'should' have done so by normal means but who was too busy or disinterested, would resolve the issue of which is the true mother in any way other than by awarding parental status to the host-mother, contracts to the contrary notwithstanding.
>
> "Second, by statute in many states any adoption release executed by the natural mother before the birth of a child is invalid. Even in those states that do not declare parental surrenders to be absolutely void, courts appear to take a dim view of the validity of an adoption release signed prior to the birth of the child." Holder, Legal Issues in Pediatrics and Adolescent Medicine (John Wiley & Sons, 1977) pp 7, 8.

The evils attendant to the mix of lucre and the adoption process are self-evident and the temptations of dealing in "money market babies" exist whether the parties be strangers or friends. The statute seeks to prevent a money market for the adoption of babies.

APPENDIX

The defendant prosecuting attorney concedes that the plaintiff natural mother (Roe) and the plaintiff couple (Doe) are free to "conceive a child, bear it, and raise it as they agree among themselves because these acts are guaranteed by the right to privacy." The defendant prosecuting attorney argues perceptively when he asks: How much money will it take for a particular mother's will to be overborne, and when does her decision turn from "voluntary" to "involuntary."

In their brief and in oral argument plaintiffs vigorously argue that they are in this Court motivated by good will and with the best of intentions seek the Court's approval of their proposed course of action. The prosecuting attorney pointedly responds as follows:

"Plaintiffs seek to convince this court that the 'surrogate' mother would [act] out of altruistic rather than pecuniary motives. If that were so, no monetary payment would be necessary because under MCLA 710.54 she can still be reimbursed for fees and expenses. What plaintiffs seek is to provide her with a sum of money ($5,000) over and above the reasonable expenses she has incurred. Even if some of this money goes for legitimate expenses unrecognized by MCLA 710.54, the fact remains that the primary purpose of this money is to encourage women to volunteer to be 'surrogate' mothers. Plaintiffs have initiated this lawsuit because few women would be willing to volunteer the use of their bodies for nine month if the only thing they gained was the joy of making someone else happy by letting that couple adopt and raise her child. Thus, contrary to plaintiffs' exhortations, in all but the rarest of situations, the money plaintiffs seek to pay the 'surrogate' mother is intended as an inducement for her to conceive a child she would not normally want to conceive, carry for nine

> months a child she would not normally want to carry, give birth to and then, because of this monetary reward, relinquish her parental rights to a child that she bore."

The personal desires and intentions of plaintiffs are not in question, and their good faith is conceded. Nonetheless, public policy is established to guide all of the people of this State, of whatever intent.

A desire to change the established stated public policy that meets constitutional muster is properly addressed to the legislature and not to the courts.

IV.

As to the second part of the Roe test, it is the opinion of this Court that the statutes here in question are drawn sufficiently narrow so as to comply

with the test. The statute must be drawn so as to express only the legitimate interest of the State and no other. If other interests, as well as the State's compelling interest, are regulated by the statute, then the statute must fall. Here the statute is aimed at preventing compensation as consideration involving an adoption proceeding.

Plaintiffs urge that their arrangement is not the type of action which the statute contemplated or intended to proscribe. The fact that this is not a contract among strangers, or that one of the adoptive parents would also be a natural parent, does not alter the fact that the action prohibited interjects compensation in an adoption proceeding; that money, beyond court-approved charges and fees, must be

paid to the biological mother before the parties will strike an agreement.

The statute is clear in expressing the public policy of this State that all persons involved in offering, giving or receiving anything of value in connection with an adoption are controlled by the statutes proscriptions. Neither the relationship of persons involved nor the arrangements between the parties are an exception but clearly all such actions are proscribed.

CONCLUSION

For the above-stated reasons, it is the conclusion of this Court that MCLA 710.54 and 710.69 do not violate the provisions of the Constitution. In addition, it is clear that there exists no genuine issue as to any material fact. Accordingly, pursuant to GCR 1963,

117.2(3), plaintiffs' Motion for Summary Judgment must be DENIED and defendants' Motion for Summary Judgment must be GRANTED as a matter of law.

Pursuant to the provisions of GCR 1963, 522, counsel are to present a proposed judgment consistent with this opinion within ten days of this date.

/s/
ROMAN S. GRIBBS
Circuit Court Judge

DATED: January 28, 1980
Detroit, Michigan

APPENDIX

WAYNE COUNTY JUVENILE COURT
1025 E. Forest Avenue
Detroit, Michigan 48207
Telephone 833-4400

March 2, 1977

To: Miss Margaret Pfeiffer

From: Judge James H. Lincoln

Re: Artificial insemination case. Mr. Noel Keane, Attorney

Here is the situation.

We were requested by Mr. Keane to respond to the following questions:

FIRST: A married couple suitable for adoptive parents wish to adopt a child. The wife cannot have a child. The husband would be used to artificially inseminate a non-related woman.

Would the child born as a result of this arrangement be considered as related to the adopting parents so that the adopting parents could file with the Court for adoption without going to an adoption agency?

ANSWER: My answer is yes! After considerable study and consultation I would hold that it makes no difference what means is used to impregnate a woman. The father is the person who produced the sperm that impregnated the woman. He could even be held liable for support.

SECOND: Could the adopting parents pay the woman for having the child or consenting to its adoption?

ANSWER: No! The law clearly forbids this.

THIRD: Could the adopting parents pay the expenses of the pregnancy delivery - medical - hospital - doctor - transportation to hospital - attorney fees, etc.?

ANSWER: Yes! The law permits this and it has been the custom of all Michigan Probate Court to allow the payment of such expenditures.

I personally would not be concerned with permitting payment of reasonable costs of transportation to hospital, etc., etc. I do not care about the manner of transportation as long as the expense was actually incurred.

Of course I would not approve giving a car, etc. That could be regarded as paying the woman. Nor would I permit payment of lost wages.

Mr. Keane wants me to approve expenditures as they arise.

COMMENT:

I will probably not be the Judge who handles this adoption. The petition may not be filed until after the child is born - this will be early in 1978.

The Judge who handles the case will make all the rulings and will determine what expenses to approve or disapprove.

All that I can do is to give my opinion on all of these matters.

My opinion is not binding on the Judge who will hear the petition.

I appreciate the fact that Mr. Keane wishes to clear all matters for his clients prior to proceeding and I wish I were in a position to give him something other than what I would do if I were handling the petition.

/s/
JAMES H. LINCOLN
EXECUTIVE JUDGE
JUVENILE DIVISION

JHL:gm

Other Statutes Cited:

Alaska's Adoption Code §20.15.090 entitled "Report of petitioner's expenditures" provides in subsection (b):

> This section does not apply to an adoption by a step-parent whose spouse is a natural or adoptive parent of the child.

Arizonia's Adoption Code §8-114 entitled "Report of petitioner's expenditures; exception" provides in subsection (B):

> This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

California's Adoption Code §224r entitled "Accounting of Expenditures in Connection with Birth of Child" provides in pertinent part:

> The provisions of this section shall not apply to an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the child.

Florida's Adoption Code §63.132 entitled "Report of expenditures and receipts" provides in subsection (3):

> This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

Iowa's Adoption Code §600.9 entitled "Report of expenditures" provides in subsection (1)(d):

> The provisions of this subsection do not apply in a stepparent adoption.

Nevada's Adoption Code §127.300 entitled "Penalty for receipt of compensation by unlicensed person for

placing, arranging placement of child" provides in subsection (2):

> The natural parents and the adoptive parents are not accomplices for the purposes of this section.

North Dakota's Adoption Code §14-15-10 entitled "Report of petitioner's expenditures" provides in subsection (2):

> This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

Oklahoma's Trafficking In Children Statute §866 provides in pertinent part:

> Provided however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this state for the purpose of adopting the same into his own family.